



TESMEC USA, INC. STANDARD TERMS AND CONDITIONS OF SALE

All goods and services sold by Tesmec USA, Inc. ("Seller") are expressly subject to these Standard Terms and Conditions of Sale and the Limited Warranty for Tesmec USA, Inc. ("Limited Warranty"), both of which supersede any verbal representation made by any agent of Seller. Buyer accepts these Terms and Conditions of Sale and the terms and conditions imposed by the Limited Warranty upon delivery of the goods and/or services. Any offer of sale or quote is open for acceptance only for a period of 30 days and may be accepted by Buyer only by written purchase order. No cancellations, modifications, or waiver of any offer of sale, quote, or Buyer's purchase order is effective without Seller's written consent. All terms and obligations of Seller and Buyer are performable exclusively in Johnson County, Texas. These terms and conditions shall not be modified by any course of dealing or trade customs and usage. Any terms and conditions of Buyer's purchase order that are in conflict with these Standard Terms and Conditions of Sale or of the Limited Warranty are null and void and of no effect.

1. **PRICE:** Prices are subject to change without notice. Seller reserves the right to adjust any price to reflect the prevailing price at time of delivery. All sales, excise, import/export, and other taxes payable by reason of sales to Buyer shall be added to the purchase price and paid by Buyer.
2. **PAYMENT:** Any invoice shall be paid in full in accordance with its stated terms in Johnson County, Texas. Interest will be charged at a monthly rate of 1.5% or the highest rate permitted by applicable law, whichever is lower, on the unpaid balance until paid in full on any past due invoice. In addition, Buyer shall pay Seller all costs incurred in collecting any past due account from Buyer, including all court costs and reasonable attorney's fees, on demand. Further, Buyer is obligated to review promptly all invoices and report all variances in writing within 10 days of receipt.
3. **SECURITY AGREEMENT:** As a condition to delivery of any goods or services provided by Seller, Buyer grants to Seller a security interest in the goods delivered or on which services were provided to secure Buyer's payment of Buyer's obligations under Seller's invoices as well as all renewals, modifications, and extensions of the obligations. Buyer expressly authorizes Seller to file a financing statement and to take any and all other action to perfect any security interest. Title to the goods remains in Seller as a security interest until Buyer has completed payment.
4. **DELIVERY TERMS; RISK OF LOSS:** Delivery dates are based on estimated manufacturing periods and shall not be deemed to represent fixed or guaranteed delivery dates. Unless the invoice states otherwise, delivery shall be Ex-Works (as that term is defined by the Incoterms® established by the International Chamber of Commerce from time to time) Seller's facility or point-of-manufacture. Buyer assumes all risk of loss and damage from the time the goods are placed at Buyer's disposal.
5. **FORCE MAJEURE:** Seller shall not be liable to Buyer or any other person for any claim, damage, loss, expense, or liability that results from any delay or failure to deliver goods or services if the delay or failure is in whole or in part beyond Seller's reasonable control including, but not limited to: (1) restrictions imposed by any governmental legislation, rules, or regulation; (2) any act or omission of Buyer; (3) strikes, slowdowns, or other labor unrest; (4) embargoes; (5) riots; (6) storms; (7) fire; (8) accidents; (9) war; (10) act of terrorism; (11) delay in transportation; or (12) inability to obtain necessary labor, materials, or manufacturing facilities. Any delay or failure beyond Seller's reasonable control shall not be considered a breach of contract nor create Seller liability. The date of delivery shall be extended for a period equal to the time lost because of the force majeure delay. Should Seller's delivery of product or provision of services become impossible due to the force majeure, Seller may, in Seller's sole discretion terminate its obligations to Buyer.
6. **CLAIMS OF BUYER: ALL CLAIMS BY BUYER ARE SUBJECT TO THE CLAIMS PROCEDURES CONTAINED IN THE LIMITED WARRANTY.** Buyer shall inspect goods immediately upon delivery. Goods are not subject to acceptance on the basis of any destructive or non-destructive testing and cannot be rejected on that basis. Any claim must be made by Buyer in writing within 10 days of delivery, and all ascertainable defects and nonconformities shall be stated with particularity or be deemed waived. Under no circumstances shall goods be returned to Seller without Seller's written permission. A claim that goods are nonconforming shall not entitle Buyer to deduct any sum from any invoice.
7. **LIABILITY AND DAMAGES:** If goods are nonconforming, Buyer's exclusive remedy shall be limited to the repair or replacement of the nonconforming goods in accordance with and limited by the Limited Warranty. **IN NO EVENT SHALL BUYER BE ENTITLED TO, NOR SELLER LIABLE FOR, ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, LOST PROFITS, BUSINESS INTERRUPTION, MULTIPLE, STATUTORY, PUNITIVE, EXEMPLARY, OR CONTINGENT DAMAGES OF ANY KIND, WHETHER ARISING OUT OF THIRD PARTY CLAIMS AGAINST BUYER, OR BREACH OF CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORIES OF LAW WITH RESPECT TO SELLER'S DELIVERY OF GOODS OR SERVICES, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO.**
8. **LIMITATIONS ON SUITS AND ACTIONS:** No action or suit to enforce Buyer's rights or remedies may be brought later than two years from the date of any actual breach by Seller, or from date of delivery, whichever occurs first.
9. **CHANGES, ALTERATIONS:** In its sole discretion, Seller may make any changes in the design and manufacture of goods from time-to-time and may discontinue lines or models at any time without prior notice to Buyer. Seller makes no guarantee, warranty, or representation of the continuation of any particular model, product, or product line.
10. **MADE-TO-ORDER GOODS:** Seller has no responsibility for errors or variations in patterns, tooling, specifications, drawings, or designs furnished to it by Buyer for any made-to-order goods. Buyer agrees to pay for changes in patterns or tooling made necessary by Buyer's change in specifications, drawings, or designs, and agrees to assume all risks of damage resulting from such changes when damage occurs without fault of Seller, such as ordinary wear and tear. **Seller shall not be liable for damages to patterning and tooling equipment, except those due to Seller's gross negligence.** Pattern and tooling storage facilities are provided by Seller for active patterns and tooling only. Patterns and tooling not in use for period of 12 months are subject to storage charges or return to Buyer at Buyer's expense. Seller accepts no liability for the continued existence or availability of the pattern or tooling after such period of inactivity. **Buyer shall indemnify, hold harmless, and defend Seller, at Buyer's expense, in any court or other dispute forum, against any claim, demand, loss, expense, or liability, including attorney's fees, in any way related to the manufacture, sale, or use of goods manufactured in accordance with patterns, tooling, specifications, drawings, or designs supplied by Buyer, including, but not limited to, actual or alleged infringement of any patents, trademarks, or other intellectual property, and product liability claims of any kind from any third party, unless solely the result of Seller's gross negligence.**
11. **CUSTOMS REGULATIONS:** It is Seller's policy to fully comply with any and all regulations of the United States, including the Export Administration Regulations, relating to the transportation, sell, delivery, or shipment of goods outside of the United States. Seller is not responsible for the delay or failure of delivery of any goods subject to this sale that are not permitted to be exported. Further, Buyer represents, warrants, and agrees that Buyer has provided to Seller **ALL** information regarding the end-user and final destination of the goods subject to this sale. Buyer understands and acknowledges that Seller will rely on the information provided by Buyer in making a determination whether to apply with the Bureau of Industrial Security for an export license and in making any application. Accordingly, Buyer indemnifies and holds Seller harmless from any penalties, fines, or damages that result from Seller's delivery of any goods or services in violation of the export regulations of the United States that arises from information provided or that should have been provided by Buyer to Seller for export purposes. Diversion, exportation, or re-exportation contrary to U.S. law is prohibited. Seller has the absolute right – without any liability to Buyer – to cancel any sale that Seller believes to be in violation of any export regulation.
12. **APPLICABLE LAW AND FORUM:** All offers of sale, quotes, purchase orders, sales, invoices, these Standard Terms and Conditions of Sale, and the Limited Warranty shall be governed by the laws of the State of Texas, excluding conflicts of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply. All obligations shall be performed in Johnson County, Texas. Buyer consents and submits to personal jurisdiction in Johnson County, Texas, and any dispute arising out of this transaction shall be determined in the courts of Johnson County, Texas. **ADDITIONALLY, BUYER UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS TRANSACTION.**
13. **SELLER'S REMEDIES:** If Buyer terminates or cancels a purchase order, Buyer is liable to Seller for all Seller's costs and other commitments incurred as of the date of cancellation, plus Seller's incidental damages and profits lost from Buyer's failure to perform.
14. **WEB-BASED COMMUNICATIONS:** Buyer agrees that any communications regarding any quote, offer of sale, purchase order, invoice, these Standard Terms and Condition of Sale, or the Limited Warranty may be by email or other web-based vehicles, including through Seller's web-site. By providing its email address, Buyer consents to and accepts any and all electronic communications the same as though they were contained in a written document signed by the sender.